

**Testimony of Robert Gauthier, Executive Director
The Salish & Kootenai Housing Authority
Before the Senate Committee on Indian Affairs**

**NAHASDA OVERSIGHT HEARING
FEBRUARY 13, 2002**

It is a pleasure to appear before you today to report on an exciting time in Indian Country and to request your continued support of the present Federal approach to Indian Housing.

I would like to begin by thanking Chairman Inouye, Vice Chairman Campbell and the other members of the Committee for inviting us here today, but also for your unwavering support of Indian housing. I would also like to acknowledge the staff of the Committee both present and past. They really get things done. I have had the pleasure of getting to know some of them in their efforts to better understand Indian housing and I must say they inspire and encourage us in Indian Country. We are grateful to them.

The Senate Indian Affairs Committee's vision, leadership and willingness to partner with us has allowed us to achieve many of the dreams we jointly shared just over ten short years ago. When this Committee created **THE NATIONAL COMMISSION ON AMERICAN INDIAN, ALASKA NATIVE AND NATIVE HAWAIIAN HOUSING**, the wheels of change were set into motion. Thirty-five specific recommendations plus various agency recommendations were made by this Commission. I am proud to appear here today and witness with you the progress in Indian housing that found its roots in those initiatives.

Congratulations, Senator Inouye, on your role in successfully developing and funding new housing opportunities through the Native Hawaiian Housing Block Grant based on NAHASDA. You have kept your word to us. Badly needed funding for underserved Hawaiians has not come at the expense of other Native housing programs. In fact, funding through HUD for NAHASDA has nearly met the Commission's 1992 recommendation of \$690 Million per year. Funding for fiscal year 2002 was \$648 million. If we could get the other Federal Government partners to meet their recommended funding levels, we could make even more progress. Bureau of Indian Affairs Housing Improvement funds have not increased, nor has Indian Health Service 121 funding. This is in spite of increased demand due to the success of NAHASDA.

We are now finishing the fifth year of the **NATIVE AMERICAN HOUSING AND SELF DETERMINATION ACT**. I have witnessed more positive change in Indian housing over that time period than I would have imagined when the law was adopted. It is not only my opinion that NAHASDA is working. At a recent United Native American Housing Association (UNAHA) meeting, thirty one members of the Great Plains tribes were surveyed as to their impression of NAHASDA and whether the Act was meeting its intended purpose. While some of the tribes are still adjusting to the changes brought by the Act, without exception every single member expressed their support for the new delivery system and voiced unanimous support for its reauthorization. Furthermore, NAHASDA is generating exactly the kind of interest from equity partners, banks and other federal agencies that was intended.

For the first time ever, Indians are discussing financing options, tax credit pros and cons, qualifying for Rural Housing self-help funding and integrating infrastructure questions. At Salish & Kootenai, we have averaged fifty units a year of new construction with only a handful funded through the NAHASDA block grant. We actually see the light at the end of the tunnel because NAHASDA is meeting the intent of Congress in ways we only dreamed of. Giving tribes a little equity and a lot of autonomy will continue to pay huge dividends. We encourage you to reauthorize NAHASDA and consider a few minor changes to make the law work even better. With your permission I would offer the following suggestions.

There are a couple of key areas within NAHASDA under Title VI & VII that could be amended to result in greater access to working capital, enhance self-determination and increase home ownership among Native Americans.

One important component of the home ownership equation is the availability of mortgage financing that promotes affordable housing. State and local government agencies utilize tax-exempt financing as a primary tool to fund housing in underserved markets. Indian Country does not enjoy that same benefit because of provisions in Section 7871 of the IRS Code. Senator John McCain's bill, Senate Bill 660, addresses several of the key issues that must be amended to facilitate broader application of tax-exempt financing. These proposed changes are consistent with existing provisions set forth under NAHASDA.

Another area that deserves attention is the HUD Section 184 Program. This program has tremendous potential; however it continues to receive a lukewarm reception. Unfortunately, because of low use, the President has chosen to cut both Section 184 and Title VI funding in his fiscal year 2003 budget. We would like to see these numbers return to previous funding levels, but first we must facilitate better access to the programs.

Proposed Amendments to Title VI of NAHASDA

Sec.601.Authority

Subparagraph (a) Authority – this provision defines the terms of the guarantee created under Title VI. The intent of this program is to improve access to the capital markets for tribal communities. However, Section 7871 of the IRS Code has a “federal guarantee” prohibition that prevents tribes from accessing tax exempt financing using the Title VI guarantee. This application of the federal guarantee would reduce borrowing costs for tribes. In addition, the cost associated with this increased tax exempt bonding authorization would be limited and defined by the annual appropriation for Title VI.

Sec.601.Authority and Requirements

Subparagraph (b) Lack of Financing Elsewhere – this provision states that a tribe must certify that a federal guarantee is necessary to complete the transaction in a timely manner. This certification places an unnecessary burden on the tribes. This requirement could have the unintended consequence of a tribe making application with a lender to finance the proposed activity and receive an approval at an above market rate. Does the increased cost of funds constitute enough reason for the Title VI Guarantee to become applicable? The policy does not appear to be warranted.

Proposed Amendments to Title VII

Sec.701.Loan Guarantee for Indian Housing

Subparagraph (k) GNMA Authority – The GNMA provision creates the mechanism to issue housing bonds under this section of the code. The tribe is the applicant on the underlying mortgages and the occupants must rent/lease the units for ten years from the issuance date before they can actually assume the existing mortgage or purchase the home from the tribe. If Section 7871 of the IRS Code were amended to allow tax exempt financing for “private activity bonds” using this provision of NAHASDA, individual families could obtain mortgage financing at a lower rate of interest using bond proceeds. The costs of this new authorization would be limited to the annual appropriation for HUD Section 184 Program. This proposed amendment provides a defined mechanism through which home ownership can be realized without placing undue financial burden on the federal budget and would function outside state volume caps. A residual benefit associated with this amendment would mean new life for the HUD Section 184 Program.

Another characteristic of the HUD Section 184 that should be visited is the requirement for mortgage guarantee on individual loans. The 184 Program would benefit if it had the ability to underwrite and offer pool insurance for a number of mortgages from a common borrower i.e., the tribe or TDHE. By underwriting the credit risk of a

pool and requiring a reserve account to offset losses beyond historic 184 experiences, ONAP could offer a viable program with broader appeal.

Another suggestion for improving the Section 184 program would require another approach to evaluation of the credit of applicants. We believe that Native Americans have historically not had access to credit and often the credit they have had access to is onerous if not illegal. Some 65% of the credit issued to Native Americans carry terms that would not be acceptable off the Reservation. Therefore, we suggest the following changes:

With down payment from any source of 10% or greater:

1. Collection-allowed if converted to payment program-in writing-payment to be included in ratios.
2. Judgments-must be paid
3. Other derogatory credit must be current for the past three months.
4. Open credit must be included in ratios.

Applicants with down payments less than 10% should be allowed to make all past derogatory credit count as good as long as it is current for three months or more.

Bankruptcy is acceptable if discharged 12 months or longer.

Lease to own-12 months of on time home payments will qualify for acceptable credit. All open credit must be included in ratios.

We believe that 184 underwriting has moved closer and closer to FHA underwriting which was not the original intent of the program. (I was there) We need to loosen up and accept more realistic underwriting standards.

Sec.202.ELIGIBLE AFFORDABLE HOUSING ACTIVITIES

Currently reads: "Affordable housing activities under this title are activities, in accordance with the requirements of this title, to develop or to support affordable housing for rental or homeownership, or to provide housing services with respect to affordable housing, through the following activities:"

This language has been interpreted by HUD to limit all NAHASDA resources to residents of affordable housing. They say that if a poverty level Indian child living in a tar-paper shack wants to play baseball on a Housing Authority sponsored team, he would have to be charged! If his mother wanted credit counseling to qualify for homeownership, and the counseling was paid for with NAHASDA funds, she must pay. If she lived in a HUD funded unit however, she would not be charged! I don't believe this was the intent of Congress and if we changed the wording of Sec.202 to read as follows we could solve this problem:

Should read: "Affordable housing activities under this title are activities, in accordance with the requirements of this title, to develop or to support affordable housing for rental or homeownership, or to provide housing services for eligible families, living in affordable housing units or not, through the following activities:"

In closing, I think it is a testament to the progress of NAHASDA that we are able to elevate the Indian housing discussion to the level we are at today. As I indicated before, those of us who were here before NAHASDA understand the power of the tool we now have to work with. Our intent is to become ever less reliant on federal funding for our housing programs, and I am sure that is what the Congress and Administration want as well. I believe that if we can move in the direction of alternate financing, utilizing Section 184, Title VI, tax exempt bonds, and other ways of leveraging NAHASDA, we will have come closer to hitting the mark this Committee set out to reach in 1990.

Thank you for your consideration of these suggestions and I welcome any questions you may have.